

PANORAMIC

# US CONSTRUCTION (STATE-BY-STATE)

USA - Colorado

 LEXOLOGY



# US Construction (state-by-state)

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## REGULATION AND COMPLIANCE

### Licensing procedures

**Must foreign designers and contractors be licensed locally to work and, if so, what are the consequences of working without a license?**

In Colorado, foreign designers and contractors must generally be licensed locally to work legally within the state.

Colorado statute provides general licensing requirements for architects and interior designers, engineers, and contractors:

#### Architects and interior designers

- Under section 12-120-402, architects must be licensed by the Colorado Department of Regulatory Agencies (DORA) to practice in Colorado. Foreign architects must also be licensed in Colorado, even if licensed in another state or country. To obtain a license to practice architecture in Colorado, individuals must meet educational, experience, and examination requirements, and comply with Colorado's state-specific regulations.

#### Engineers

- Similarly, engineers must also be licensed by DORA to practice engineering in Colorado as required by section 12-120-202 et seq. This licensing requirement applies to all types of engineering disciplines including civil, mechanical, electrical, etc. Foreign engineers must meet Colorado's licensing requirements, including the passage of the Fundamentals of Engineering (FE) and the Principles and Practice of Engineering (PE) exams, if required.

#### Contractors

- As laid out in section 30-11-125, contractors in Colorado must obtain a license from the county prior to engaging in business as a building contractor within the unincorporated areas of the county, provided the county has adopted a building code and established a licensing program. The licensing process often includes proof that an applicant passed a nationally recognized examination in addition to other county-specific requirements.
- Contractor licenses are typically issued by the city or county where the work will be performed. For example, section 133.2 of the Building and Fire Code for the City and County of Denver requires all contractors to be licensed before engaging in construction work within Denver.

#### Consequences of working without a license in Colorado

Working without a license in the construction industry in Colorado can lead to serious legal consequences. Here's an outline of these consequences according to Colorado statute:

#### Architects and interior designers:

- Under section 12-20-407, practicing architecture without a license in Colorado may be punished in the form of administrative penalties (e.g., fines), civil and/or criminal

liability, and the inability to lawfully sign or seal architectural documents. It may also result in disciplinary action, such as the suspension or revocation of a license, if the individual is licensed elsewhere.

#### Engineers:

- Section 12-20-407 also makes practicing engineering without a license punishable with fines, criminal charges, or civil lawsuits. In addition, any engineering documents (e.g., plans, reports) created by an unlicensed engineer may be considered invalid, which could halt construction projects or lead to legal disputes.

#### Contractors:

- In Colorado, the consequences of working without a proper local license for foreign contractors can be severe. The exact penalties depend on the type of contractor (general, electrical, plumbing, etc.) and local ordinances and regulations since licensing for most general contractors is handled at the city or county level.
- Under section 12-115-123, electricians who perform work without a license can be charged with a class 2 misdemeanor. Penalties include up to 120 days in jail and/or up to \$750 in fines.
- Plumbers who perform work without a license can be charged under section 12-155-122 with a class 2 misdemeanor in Colorado and therefore face penalties of up to 120 days in jail and/or a maximum fine of \$750.

**Law stated - 28 August 2025**

### **Bribery**

**If a contractor has illegally obtained the award of a contract, for example, by bribery, will the contract be enforceable? Are bribe-givers and bribe-takers prosecuted and, if so, what are the penalties they face? Are facilitation payments allowable under local law?**

In Colorado, contracts obtained illegally such as through bribery are generally considered void and unenforceable. Both bribe-givers and bribe-takers can face significant legal consequences, including criminal prosecution.

#### Prosecution of bribe-givers and bribe-takers

Putting aside the risk of permanent damage to one's reputation and career, bribing a public official in Colorado is a serious crime under state law. Section 18-8-302 makes bribery of a public official a Class 3 felony for both the person offering the bribe (bribe-giver) and the official accepting it (bribe-taker) can be prosecuted. A Class 3 felony in Colorado is punishable by 4 to 12 years of imprisonment (with potential parole), fines ranging from \$3,000 to \$750,000.

#### Facilitation payments

Colorado law does not make exceptions facilitation payments, which are typically small bribes intended to expedite routine governmental actions. These payments are considered illegal and treated as bribery under both state and federal law. The penalties for such

actions track those for other forms of bribery, underscoring Colorado's strict stance against corruption in any form.

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## CONTRACTS

### Construction contracts

**What standard contract forms are used for construction and design? Must the language of the contract be the local language? Are there restrictions on choice of law and the venue for dispute resolution?**

The construction and design industry in Colorado frequently utilizes standard contract forms developed by well-established organizations, including:

- American Institute of Architects (AIA) Contracts: It is common for Colorado construction and design industry professionals and entities to use standard contract forms published by the AIA for a wide range of projects, such as AIA A101 Standard Form of Agreement between Owner and Contractor; A201 General Conditions of the Contract for Construction; and AIA B101 Standard Form of Agreement between Owner and Architect.
- ConsensusDocs: These are another set of widely recognized contract forms, such as ConsensusDocs 200 (Standard Agreement and General Conditions Between Owner and Constructor) and ConsensusDocs 240 (Agreement Between Owner and Design Professional).
- EJCDC Contracts (Engineers Joint Contract Documents Committee): EJCDC contracts are often employed for engineering projects in Colorado, particularly in public works and infrastructure projects. These documents are recognized as industry-standard contracts for engineers, architects, and public project owners.
- Colorado Department of Transportation (CDOT) Contracts: CDOT has its own set of standard contract forms for public infrastructure projects (e.g., highways, bridges). These contracts align with Colorado-specific rules for public projects, discussed in more detail below.

Some Colorado-specific public contracts may use forms developed by local agencies to ensure that requirements under Colorado and local laws and regulations are included.

#### Language of contract

While Colorado law does not mandate that construction contracts be in English, it is the de facto standard for legal contracts in the state. This is due to the practical need for clarity in communications and the fact that section 13-1-120 requires courts in Colorado to conduct proceedings in English.

#### Restrictions on choice of law and venue for dispute resolution

Choice of law: Colorado law generally allows parties to choose which state's laws will govern their contract. As an example, section 4-1-301, which applies to contracts involving the sale of goods, parties may choose the governing law their agreement. In the context of a construction project, the statute could apply to the purchase of materials (e.g., steel, wood,

or fixtures) from a supplier. There are, however, limitations. The primary exception is that a court may invalidate a choice-of-law provision if it violates Colorado's public policy.

Venue for dispute resolution: Venue is typically based on where the defendant resides, where the incident occurred, or where the property involved in the dispute is located. However, parties may include a choice-of-venue provision, sometimes referred to as a forum-selection clause, in their agreements specifying where suit may be brought. These provisions are generally considered valid unless shown to be unreasonable under the circumstances, fraudulently induced, or against public policy.

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## **Payment methods**

### **How are contractors, subcontractors, vendors and workers typically paid and is there a standard frequency for payments?**

In Colorado, contractors, subcontractors, vendors, and workers are typically paid according to the terms specified in their contracts, but there are some common industry practices and legal standards regarding payment frequency and mechanisms.

#### **Contractors**

- **Progress Payments:** Contractors typically receive progress payments at regular intervals, such as monthly or based on specific project milestones. These payments are calculated according to the contract terms. For example, section 24-91-103 requires a contract for a public works project to provide for partial payments on at least a monthly basis. For private projects, the contract will usually specify progress payment terms, and state law ensures that these payments are made in a timely manner.
- **Retainage:** Retainage in Colorado is generally between 5% and 10% of each progress payment that is usually withheld until the project reaches substantial completion. For public projects, section 24-91-103 limits retainage to no more than 5%. For private projects, the retainage percentage is determined by the contract, but it must be reasonable.
- **Final Payment:** The final payment is made when the project is substantially complete, and the contractor has fulfilled all contract obligations. This ensures compliance with the Colorado Mechanics Lien Law (section 38-22-101 et seq.), which governs lien rights and the release of final payments.

#### **Subcontractors and vendors**

- **Progress Payments:** Colorado law requires that contractors pay their subcontractors within a specific period after receiving payment from the project owner. For public projects, section 24-91-103(2) makes it mandatory that contractors pay subcontractors and suppliers within seven days of receiving payment for public projects. For private projects, the payment terms are generally outlined in the contract.
- **Retainage:** Subcontractors and vendors are subject to the same retainage terms as general contractors, with retainage typically withheld until project completion. For

public projects, section 24-91-103 limits retainage to 5%, and for private projects, the amount and timing of retainage are usually determined by the contract.

- **Vendor Payments:** Vendors are typically paid based on the delivery of materials or equipment as specified in purchase orders or contracts. Generally, retainage is not applied to vendor payments, making them less complex than contractor or subcontractor payments.

#### Workers

- **Payment Frequency:** Workers must be paid according to section 8-4-103, which requires that employees be paid at least once a month or more frequently if specified in the employment agreement.
- **Wage Laws:** Colorado wage laws, in conjunction with the Fair Labor Standards Act (FLSA), regulate wage payments, including overtime pay. Under section 8-4-101 et seq., non-exempt employees are entitled to overtime pay for hours worked beyond 40 hours per week or 12 hours per day. Overtime pay must be at least 1.5 times the regular hourly rate, as outlined in section 8-6-101 et seq. and COMPS Order #38.
- **Prevailing Wages:** For public works projects, Colorado enforces prevailing wage laws under section 24-92-201 et seq. These provisions require workers on public construction projects be paid wages comparable to the local prevailing rates for similar work. The Colorado Department of Labor and Employment sets and enforces these wage rates.

#### Mode of payment for contractors, subcontractors, vendors, and workers

Contractors, subcontractors, vendors, and workers in the state are typically paid through various methods, including checks, electronic funds transfers (EFT), direct deposits, and payroll cards. The specific mode of payment depends on the contract terms and industry practices. Contractors and subcontractors often receive payments via checks or EFTs, while workers are usually paid through direct deposit or payroll cards. Vendors might be paid through purchase orders with net terms, wire transfers, or credit cards. Ensuring timely payment through these methods is crucial for compliance with Colorado law and maintaining good business relationships.

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### PPP and PFI

#### Is there a formal statutory and regulatory framework for PPP and PFI contracts?

Colorado has a formal statutory and regulatory framework for Public-Private Partnerships (PPP) and Private Finance Initiative (PFI) contracts, particularly concerning transportation and infrastructure projects. While PPPs and PFIs in the state are commonly used in the development of public works, highways, and transit systems, there are specific statutory provisions governing these agreements:

- Section 43-1-1202 gives the Colorado Department of Transportation (CDOT) the authority to enter into agreements with private entities for the design, financing,

construction, operation, and maintenance of transportation facilities in Colorado. Key aspects of this authority include:

- Allowing CDOT to partner with private entities for highway projects.
- Enabling flexible financing models, including user fees or tolls, to fund projects.
- Providing for the transfer of risks and responsibilities between the public and private sectors, depending on terms of an agreement.
- Under section 43-4-806, the Colorado High-Performance Transportation Enterprise (HPTE), now known as the Colorado Transportation Investment Office (CTIO), is tasked with facilitating and managing PPPs for transportation projects. CTIO is authorized to enter into PPP agreements for the construction, financing, and operation of toll roads, express lanes, and other transportation infrastructure, and to engage in long-term contracts with private entities to optimize public value.
- Section 29-4-710 provides for public-private partnerships for affordable housing projects, allowing local governments to engage in PPPs to develop, finance, and manage housing projects. The statute also encourages the use of innovative financing models to meet local housing needs.
- Colorado's Public-Private Partnership (P3) Act, section 24-94-101 et seq., enables local governments and state agencies to enter into PPP contracts for a wide range of public infrastructure projects, beyond just transportation, including water treatment plants, schools, and other public facilities. The law permits state public entities, including the executive, legislative and judicial branches of the state government, to enter into agreements with private companies to develop and/or operate public projects.

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## LABOR LAW

### Labor requirements

**Are there any laws requiring a minimum amount of local labor to be employed on a particular construction project?**

In Colorado, there are no specific state laws imposing a minimum requirement for the employment of local labor on construction projects in the private sector.

However, for public works and government-funded construction projects, several provisions related to the use of local labor and requirements are designed to ensure the employment of a certain percentage of local workers in certain circumstances. Under section 8-17-101, workers meeting the definition of 'Colorado labor' are required to perform at least eighty percent of the work on public projects undertaken in the state of Colorado and financed in whole or in part by state or local funds. This requirement can be waived by the governmental body financing the public works project where there is reasonable evidence demonstrating insufficient Colorado labor to perform the project and that compliance would create an undue burden that would substantially prevent a project from proceeding to completion.

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## Labor and human rights

**What laws apply to the treatment of foreign construction workers and what rights do they have? What are the local law consequences for failure to follow those laws?**

Laws for the treatment of foreign workers

In Colorado, foreign construction workers are subject to the same labor laws as domestic workers, but additional laws specifically address their employment due to their immigration status. The treatment of foreign construction workers is regulated by a combination of federal and state laws, covering areas such as wages, working conditions, and immigration status. Federal laws include the Immigration and Nationality Act (INA), Fair Labor Standards Act (FLSA), Occupational Safety and Health Act (OSHA), among others.

Colorado state laws:

- Colorado Occupational Safety and Health Act, section 8-14.4-101 et seq. - extends Colorado's workplace protections to foreign construction workers in Colorado.
- Colorado Overtime and Minimum Pay Standards (COMPS) Order #38 – sets forth wage and hour rules in Colorado, including overtime and minimum wage requirements for all workers, including foreign construction workers.
- Colorado Anti-Discrimination Act (CADA), section 24-34-301 et seq. – prohibits discrimination in employment based on race, national origin, or immigration status. This ensures that foreign workers have the right to a workplace free from discrimination and harassment.
- Colorado Public Projects Labor Requirements, section 8-17-101 et seq. – establishes requirements regarding worker pay on state-funded public works projects and mandates that foreign workers be paid prevailing wages when working on public projects.
- Colorado Workers' Compensation Act, section 8-40-101 et seq. – provides foreign workers with workers' compensation benefits in the event of a work-related injury or illness.

Consequences for non-compliance

- Certain violations of section 8-40-101 et seq. may be punishable with a fine of up to \$500 per day for each day of non-compliance.
- Employers found to have violated CADA may be required to provide compensatory damages, including back pay, reinstatement of the employee, and compensation for emotional distress under section 24-34-405.
- Under section 38-22-101 et seq. (Mechanics Lien Law), failure to properly file or release a lien, or refusal to pay subcontractors or suppliers as required under lien law can face lawsuits, loss of property through foreclosure, and penalties for wrongful liens.

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## PAYMENT

### Statutory payment protection

**Where major projects have been interrupted or canceled, do the local laws provide any protection for unpaid contractors who have performed work?**

In Colorado, local laws provide protections for unpaid contractors who have performed work on projects that have been interrupted or cancelled. These protections are primarily offered through the Colorado Mechanics Lien Law and other related statutes that help contractors recover unpaid amounts for labor, materials, and services provided.

#### Colorado mechanics lien law

The Colorado Mechanics Lien Law, section 38-22-101 et seq., allows contractors, subcontractors, suppliers, and other laborers to file a lien against the property they worked on if they are not paid for their services or materials. A Notice of Intent to lien must be filed at least 10 days before the lien is recorded. The lien must be filed within 4 months of the last day that labor or materials were provided on the project. The lien attaches to the property, and the contractor can eventually foreclose on the lien if the debt is not paid, which could result in the sale of the property to satisfy the debt.

#### Contract forfeiture and sale of partially completed works

Under section 36-3-115, if a contractor fails to proceed with the work or conform to the specifications and conditions of their contract with the state, after a period of sixty days, the state board may declare the bond and contract forfeited. The state is then required to notify the contractors of the forfeiture but may then sell the partially completed works and solicit bids for completion of the contract. The money received from the sale is first applied to the expense incurred by the state in the forfeiture and disposal process, and then to satisfy the bond and the adjudicated liens for labor or materials on a pro rata basis. Any surplus may be paid to the original contractors. This provides a mechanism for contractors to potentially recover some compensation for their work if the project is cancelled or interrupted and the contract is forfeited due to the failure of another party.

#### Public projects and Colorado labor

For public projects that do not receive federal funds, the Colorado Department of Transportation (CDOT) must maintain a contract file for all projects awarded under Colorado Code Regulations section 601-10 Chapter 7 for a period of six years. This implies a record-keeping requirement that could be beneficial for contractors seeking to prove work performed and payments due in the event of a dispute or project cancellation. While this reference does not directly address payment protections, the retention of detailed contract files can support claims for unpaid work.

#### Payment bond claims

Under sections 38-26-105 to 38-26-107, public entities obtain payment bonds for projects over \$50,000. These bonds ensure that subcontractors, suppliers, and laborers are paid for the work or materials they provide on public projects. After providing notice, if the payment is still not made, the unpaid party can file a claim against the payment bond.

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## FORCE MAJEURE

### Force majeure and acts of God

Under local law are contractors excused from performing contractual obligations owing to events beyond their control?

In Colorado, contractors may be excused from performing their contractual obligations due to events beyond their control through the application of 'force majeure' clauses or certain legal doctrines like 'impossibility and frustration of purpose'. However, whether a contractor is excused from performance depends on the specific contract terms and the circumstances of the event.

#### Force majeure

Under section 43-1-1402, the term 'force majeure' is explicitly defined within the context of design-build transportation or utility relocation projects. It includes events such as fire, explosion, severe weather, acts of God, or any other cause beyond the control of the party performing work that could not have been prevented by exercising reasonable diligence. This definition suggests that contractors involved in such projects may be excused from performance obligations if a force majeure event occurs, provided they could not have prevented the event through reasonable diligence.

#### Impossibility of performance

The doctrine of impossibility of performance is a common law principle applied in Colorado courts to excuse contractual obligations when performance becomes literally impossible due to unforeseen events. For instance, section 4-2-615 addresses situations where performance is excused due to unforeseen conditions that make performance impracticable or impossible. This serves as a basis for applying the common law doctrine of impossibility in contract cases.

#### Frustration of purpose

The doctrine of frustration of purpose is also a common law principle used in Colorado to excuse performance when an unforeseen event destroys the purpose of the contract, making the contract useless to one party. Under section 4-2-615, the doctrine of frustration of purpose is an acknowledgment that performance can be excused when an event makes the principal purpose of the contract irrelevant or impossible to fulfil.

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## DISPUTES

### Limitation periods

Are there any statutory limitation periods within which lawsuits must be commenced for construction work or design services and are there any statutory preconditions for commencing or maintaining such proceedings?

In Colorado, there are statutory limitation periods and preconditions that apply to lawsuits for construction work or design services.

### Statutory limitation periods

- Section 13-80-104 provides a statute of limitations for construction defect claims that requires such claims be filed within two years from the time the claimant either discovered or should have reasonably discovered the defect. This applies to claims related to construction services, design services, and improvements to real property, and covers claims for negligence, breach of contract, or other liability arising from defective work or design.
- Section 13-80-104 also includes a statute of repose that serves as an absolute deadline beyond which no legal action can be initiated, regardless of when the defect is discovered. The statute of repose in Colorado is six years after the substantial completion of the construction professional's scope of work on a project. However, if the defect is discovered in the fifth or sixth year after substantial completion, the claimant has an additional two years to file a lawsuit (up to a maximum of eight years after substantial completion).

### Statutory preconditions for commencing or maintaining proceedings

- Under Colorado Construction Defect Action Reform Act (CDARA) section 13-20-801 et seq., before filing a lawsuit for construction defects, the claimant must serve a Notice of Claim to the contractor, subcontractor, or design professional who performed the work. The notice must describe the alleged defect in sufficient detail and be served at least 75 days (for commercial property) or 90 days (for residential property) before filing a lawsuit.
- Some construction contracts in Colorado may include mandatory arbitration or mediation clauses, requiring parties to engage in alternative dispute resolution (e.g., arbitration) before filing a lawsuit. These clauses are enforceable under section 13-22-201 et seq. (Colorado's Uniform Arbitration Act).
- For claims against licensed professionals, such as architects and engineers, section 13-20-602 requires a Certificate of Review to be filed with the court. This certificate must be signed by a qualified expert, indicating that the claim has merit and is not frivolous. The certificate must be filed within 60 days of filing the lawsuit and applies to claims alleging negligence in design services.

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